



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CIVIL SUIT NO. 40 OF 2012

MUNICIPAL COUNCIL OF MERU.....PLAINTIFF

VERSUS

GITUMA MWITI.....1ST DEFENDANT

RUFFERS MUTUA (CHIEF).....2ND DEFENDANT

MWITI TITUA M'THAMBU.....3RD DEFENDANT

KIBAKI M'IRINGO.....4TH DEFENDANT

MWORIA M'MUTUNGI.....5TH DEFENDANT

MRS. NJIRU NKURUGUCHI.....6TH DEFENDANT

R U L I N G

There are two applications in this matter. The 1st application is dated 20/05/2015 and seeks orders that:-

- 1. The plaintiff's suit be dismissed for want of prosecution.*
- 2. The Court do make such further orders as may meet the ends of justice.*
- 3. Costs of this application be provided for.*

The application has the following grounds:-

- 1. The Plaintiff/Respondent has not taken any action in this suit since 15/03/12.*

The 1st and 3rd Defendants have submitted that 4 years after the Meru County Government came into existence, the plaintiffs have failed to substitute the former local authority with the County Government. They argue that the belated filing of the application dated 16/10/2014 can not cure the failure of the Plaintiff to take any step before the expiry of one year after a matter in the suit was last in Court.

The 2nd Application is dated 16th October, 2014 and seeks orders :-

- 1. That this Honourable Court be pleased to enjoin the Meru County Government in this suit in place of the defunct Plaintiff, the Municipal Council of Meru.*

2. That Cost be in the cause.

The application is supported by the affidavit of Moses N. Kirima and has the following grounds:-

- a. The *Plaintiff is defunct and no longer exists.*
- b. *The suit herein cannot proceed until the plaintiff is substituted.*
- c. *There was delay in receiving proper instructions on the way forward in the matter due to transition technicalities.*

The Plaintiff has submitted that the suitlands in dispute were compulsorily acquired by the Government and the Plaintiff developed the same by putting up a slaughter house which supplied Meru Central with meat. The Plaintiff further avers that the Defendants were compensated when their land was compulsorily acquired by the Government. The Plaintiff submits that the land was properly handed over to the Municipal Council of Meru after it was compulsorily acquired. The plaintiff urges this Court not to dismiss the suit on a mere technicality.

I opine that the requirements laid down by the provisions of order 17, CPR, do not constitute a mere technicality. They amount to a legal requirement.

However, I find it necessary for the Court to determine some issues in this suit on their merits, especially the claim that the Defendants had been compensated when the parcels of land were compulsorily acquired by the Government. Indeed the issue of whether or not the land had been compulsorily acquired can only be determined after the suit had been heard.

Concerning the 1st application, **I find that the Plaintiff/Applicant has shown to the satisfaction of the Court in terms of order 17,CPR, that this suit should not be dismissed. Regarding the 2nd application prayer 1 thereof is allowed with the effect that the County Government of Meru is allowed to be enjoined in this suit.**

For both applications, costs shall be in the cause.

It is so ordered.

Delivered in open Court at Meru this **16th day of March, 2016** in the presence of:-

CC: Daniel/Lilian

Miss E.G. Mwangi for Gituma Mwiti

P. M. NJOROGE

JUDGE